

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JEMAYLE NOLEN,

Plaintiff,

v.

**Case No. 2:22-cv-2136
Judge Sarah D. Morrison
Magistrate Judge Chelsey M. Vascura**

SOBREMESA, LLC, *et al.*,

Defendants.

REPORT AND RECOMMENDATION

This matter is before the undersigned on Plaintiff's response to the Court's November 16, 2022 Order directing her to show cause as to why her claims against Defendants Jacque Tucker and Tyrone Custer (collectively "Defendants") should not be dismissed for failure to serve process pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. (ECF No. 25.) For the reasons that follow, it is **RECOMMENDED** that Plaintiff's claims against Defendants be **DISMISSED WITHOUT PREJUDICE**.

Rule 4(m) provides that if a defendant is not served with process within 90 days after a complaint is filed, a court must dismiss an action without prejudice or order that service be made within a specified time. Fed. R. Civ. P. 4(m). Plaintiff filed a Complaint alleging claims against Defendants on May 9, 2022. (ECF No. 1.) Plaintiff subsequently received an extension of time until November 14, 2022, to serve Defendants with process. (ECF No. 18.) After Plaintiff failed to meet that deadline, the undersigned issued an Order directing Plaintiff to show cause as to why her claims against Defendants should not be dismissed. (ECF No. 25.) In response, Plaintiff

indicates that she does not object to a dismissal of her claims against Defendants without prejudice. (ECF No. 27.)

Because Plaintiff has failed to properly serve Defendants with process, and she does not object to a dismissal of her claims against them without prejudice, it is **RECOMMENDED** that Plaintiff's claims against Defendants be **DISMISSED WITHOUT PREJUDICE**.

PROCEDURE ON OBJECTIONS

If any party objects to this Report and Recommendation, that party may, within fourteen (14) days of the date of this Report, file and serve on all parties written objections to those specific proposed findings or recommendations to which objection is made, together with supporting authority for the objection(s). A Judge of this Court shall make a *de novo* determination of those portions of the Report or specified proposed findings or recommendations to which objection is made. Upon proper objections, a Judge of this Court may accept, reject, or modify, in whole or in part, the findings or recommendations made herein, may receive further evidence or may recommit this matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

The parties are specifically advised that failure to object to the Report and Recommendation will result in a waiver of the right to have the District Judge review the Report and Recommendation *de novo*, and also operates as a waiver of the right to appeal the decision of the District Court adopting the Report and Recommendation. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

/s/ Chelsey M. Vascura
CHELSEY M. VASCURA
UNITED STATES MAGISTRATE JUDGE